

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

1 THE CIRCLE, SUITE 2
SUSSEX COUNTY COURTHOUSE
GEORGETOWN, DE 19947

June 20, 2007

Michael J. Davis
Central Violation Center
P.O. Box 5003
Smyrna, DE 19977-5003

RE: State v. Davis, Def. ID# 0410013589

DATE SUBMITTED: May 10, 2007

Dear Mr. Davis:

Pending before the Court is a motion for postconviction relief which defendant Michael J. Davis (“defendant”) has filed pursuant to Superior Court Criminal Rule 61.

Defendant originally was sentenced in this matter on January 18, 2005. He violated his probation three times and was sentenced on those violations on August 12, 2005; September 30, 2005; and February 1, 2007, as amended by order dated April 3, 2007.

Defendant attacks the violation of probation which took place on February 1, 2007. That adjudication was based on a report alleging violations of defendant’s Level 3 probation that occurred in August and September, 2006. Defendant argues that he could not have been violated during that time because he was on conditional release and he had not yet started serving his Level 3 probation. He maintains he only could have had his parole revoked.

This Court previously dealt with this issue in its May 7, 2007, decision addressing defendant's motion to correct sentence. State v. Davis, Del. Super., Def. ID# 0410013589, Stokes, J. (May 7, 2007) ("May 7, 2007 decision"). Without dealing with the procedural bars of Superior Court Criminal Rule 61, I repeat what I told defendant in my May 7, 2007 decision. This Court can revoke a defendant's probation at any time. Williams v. State, 560 A.2d 1012 (Del. 1989); U.S. v. Veatch, 792 F.2d 48 (3d Cir. 1986), cert. den., 479 U.S. 933 (1986). It does not matter if a defendant is not yet serving the probation nor does it matter if a defendant is on parole at the time. Id.; State v. Stewart, Del. Super., Def. ID# 30701972DI, Gebelein, J. (April 17, 2003).

Defendant's motion for postconviction relief is denied.

IT IS SO ORDERED.

Very truly yours,

Richard F. Stokes

cc: Prothonotary's Office
Attorney General's Office
Office of the Public Defender